

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 15-1402V
(Not to be published)

*
ROBERT ROWAN, *
*
 Petitioner, *
*
 v. *
*
SECRETARY OF HEALTH *
HUMAN SERVICES *
*
 Respondent. *
*

Filed: March 29, 2016

Decision by Proffer; Vaccine Act
Entitlement; Damages; Influenza
Vaccine; Shoulder Injury Related to
Vaccine Administration (SIRVA)

Maximillian J. Muller, Dresher, Pennsylvania, for Petitioner.
Jason C. Bougere, U.S. Department of Justice, Washington, D.C., for Respondent.

DECISION¹

HASTINGS, Special Master.

This is an action seeking an award under the National Vaccine Injury Compensation Program² on account of an injury suffered by Robert Rowan. On March 7, 2016, Respondent filed a report conceding that Petitioner is entitled to compensation in this case.

After discussions between the parties, on March 28, 2016, Respondent filed “Respondent’s Proffer on Award of Compensation.” Petitioner’s counsel, Maximillian Muller,

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this Decision on the United States Court of Federal Claims' website. Therefore, this document will be made available to the public unless the Petitioner files, within fourteen days, an objection to the disclosure of any material in the Decision that would constitute, “medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” See 42 U.S.C. § 300aa—12(d)(4)(B); Vaccine Rule 18(b).

² The applicable statutory provisions defining the Program are found at 42 U.S.C. § 300aa—10 *et seq.* (2012). Hereinafter, for ease of citation, all “§” references will be to 42 U.S.C. (2012). I will also sometimes refer to the Act of Congress that created the Program as the “Vaccine Act.”

during a telephonic status conference held on March 28, 2016, indicated that Petitioner accepts Respondent's Proffer as a reasonable measure of the amount of the award in this case.

I have reviewed the file, and based on that review, I conclude that the Respondent's Proffer appears to be an appropriate one, pursuant to § 300aa-15(b). (I have attached a copy of the Proffer to this decision.) I order that Respondent make a lump sum payment as described below.

- Respondent shall make a total lump sum payment of \$120,000.00, in the form of a check payable to Petitioner, representing compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

Under the statute governing the Program, as well as the "Vaccine Rules" adopted by this court, the special master must now enter a decision endorsing that Proffer, and the clerk must enter judgment, in order to authorize payment of the award. See § 300aa-12(d)(3)(A) and (e)(3); § 300aa-13(a); Vaccine Rules 10(a), 11(a).³

Robert Rowan is entitled to an award under the Vaccine Act to provide compensation for his injury. The award shall be in the form of a lump sum payment, as provided above.

In the absence of a timely-filed motion for review of this Decision, the clerk shall enter judgment in accord with this Decision.

IT IS SO ORDERED.

/s/ George L. Hastings, Jr.
George L. Hastings, Jr.
Special Master

³ The "Vaccine Rules of the United States Court of Federal Claims" are found in Appendix B of the Rules of the United States Court of Federal Claims.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

ROBERT ROWAN,)	
)	
Petitioner,)	No. 15-1402V
)	Special Master Hastings
v.)	ECF
)	
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	
)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Compensation for Vaccine Injury-Related Items

On March 7, 2016, respondent filed a Rule 4(c) Report conceding that petitioner was entitled to vaccine compensation for his Shoulder Injury Related to Vaccine Administration (“SIRVA”) injury. Respondent proffers that, based on the evidence of record, petitioner should be awarded \$120,000.00. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a)(1); 15(a)(3)(A); and 15(a)(4). Petitioner agrees.

II. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below, and requests that the special master’s decision and the Court’s judgment award the following:¹

¹ Should petitioner die prior to entry of judgment, respondent reserves the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

- A. A lump sum payment of \$120,000.00 in the form of a check payable to petitioner, Robert Rowan. This amount accounts for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

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RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

VINCENT J. MATANOSKI
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/s/ Jason C. Bougere
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Dated: March 28, 2016